

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CORRINA MARKLEY,

Plaintiff,

V.

NANCY A. BERRYHILL, Deputy
Commissioner of Social Security for
Operations,

Defendant.

CASE NO. 3:17-CV-05975-JRC

ORDER ON PLAINTIFF'S COMPLAINT

Defendant.

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Consent to Proceed before a United States Magistrate Judge, Dkt. 3). This matter has been fully briefed. *See* Dkt. 8, 9, 10.

After considering and reviewing the record, the Court concludes that the Administrative Law Judge (“ALJ”) erred by giving significant weight to the June 10, 2015 opinion of Dr. Patamia, but ignoring portions of that opinion that plaintiff was

unable to sustain full-time work. As the ultimate disability decision may have changed, the ALJ's error is not harmless.

This matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Acting Commissioner of Social Security (“Commissioner”) for further proceedings consistent with this Order. The ALJ erred by failing to consider significant probative evidence from treating physician Dr. Patamia’s June 10, 2015 opinion that plaintiff would be unable to work full-time, 40-hours per week in an office setting. This error affected the entire proceedings. Therefore, plaintiff will be able to present new evidence and new testimony on remand, and the ALJ must re-evaluate all of the medical evidence, the RFC, and the findings at steps four and five, if necessary.

BACKGROUND

Plaintiff, CORRINA MARKLEY, was born in 1964 and was 50 years old on the alleged date of disability onset of June 16, 2014. *See* AR. 150-51. Plaintiff has a Master's Degree in Business Administration and has some paralegal training. AR. 47. Plaintiff has work history as a compliance analyst/management analyst and legal assistant. AR. 47, 51-53, 63. She left her last job because of an alleged hostile work environment. AR. 48-51.

According to the ALJ, plaintiff has at least the severe impairments of “major depressive disorder (MDD) in partial remission versus adjustment disorder with anxiety and depression, post-traumatic stress disorder (PTSD), and fibromyalgia (20 CFR 404.1520(c)).” AR. 22.

1 At the time of the hearing, plaintiff was living with her husband and two
2 daughters. AR. 45.

3 PROCEDURAL HISTORY

4 Plaintiff's application for disability insurance benefits ("DIB") pursuant to 42
5 U.S.C. § 423 (Title II) of the Social Security Act was denied initially and following
6 reconsideration. *See* AR. 72-83, 85-96. Plaintiff's requested hearing was held before ALJ
7 Joanne E. Dantonio ("the ALJ") on June 27, 2016. *See* AR. 40-70. On September 29,
8 2016, the ALJ issued a written decision in which the ALJ concluded that plaintiff was not
9 disabled pursuant to the Social Security Act. *See* AR. 17-39.

10
11 In plaintiff's Opening Brief, plaintiff raises the following issue: whether the ALJ
12 erred in rejecting the medical opinions of Thomas Patamia M.D. and Loren W.
13 McCollom Ph.D. *See* Dkt. 8 at 1.

14 STANDARD OF REVIEW

15 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
16 denial of social security benefits if the ALJ's findings are based on legal error or not
17 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
18 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
19 1999)).

20 DISCUSSION

21 (1) Whether the ALJ erred in rejecting the medical opinions of Thomas
22 Patamia M.D. and Loren W. McCollom Ph.D.

1 Plaintiff challenges the weight assigned to the opinions of Drs. McCollom and
2 Patamia. Dkt. 8. Plaintiff contends that the ALJ improperly evaluated Dr. Patamia's
3 opinions and failed to discuss or address the entirety of two medical opinions dated June
4 10, 2015 and February 1, 2016. Dkt. 8 at 4-6.

5 The ALJ "need not discuss all evidence presented." *Vincent ex rel. Vincent v.*
6 *Heckler*, 739 F.3d 1393, 1394-95 (9th Cir. 1984). However, the ALJ "may not reject
7 'significant probative evidence' without explanation." *Flores v. Shalala*, 49 F.3d 562,
8 570-71 (9th Cir. 1995) (quoting *Vincent*, 739 F.2d at 1395). The "ALJ's written decision
9 must state reasons for disregarding [such] evidence." *Flores*, 49 F.3d at 571.

10 Between 2015 and 2016, treating psychiatrist, Dr. Patamia provided numerous
11 opinions related to plaintiff's impairments and her ability to work. *See* AR. 332-755. On
12 June 10, 2015, Dr. Patamia completed a questionnaire detailing plaintiff's conditions and
13 limitations. AR. 722-726. Dr. Patamia opined that plaintiff's impairments were long-term
14 (lasting more than six months) and affected her thinking, sleeping, concentrating, and
15 interacting with others. AR. 724. Dr. Patamia opined that plaintiff cannot perform the
16 essential functions of her job. AR. 725.

17 In response to the question, "please list the essential functions (*see complete list on*
18 *the enclosed Job Analysis*) that Ms. Markley is unable to perform due to her medical
19 impairments(s):" Dr. Patamia responded, "Full-time[;] training managers[;] collaborate
20 with personnel[;] administer meetings." AR. 725 (emphasis original). The enclosed Job
21 Analysis listed full-time work, 40 hours per week in an office setting as the first essential
22 function of plaintiff's job as a business unit analyst. AR. 725. In response to the question,
23
24

1 “[p]lease describe, in your professional opinion, all medical restrictions needed for Ms.
2 Markley[,]” Dr. Patamia stated, “[l]ow stimulation environment[,] [s]upportive
3 management style (non-authoritarian, non-confrontational).” AR 726.

4 The ALJ assigned significant weight to Dr. Patamia’s June 10, 2015 opinion. AR.
5 32-33. The ALJ stated it was incorporating Dr. Patamia’s opined limitations into the
6 RFC. AR. 33. The ALJ stated “the only real limitations he provided were a low
7 stimulation environment and a supportive-non authoritarian management-style.” AR. 33.
8 The ALJ noted that the RFC incorporated these limitations by limiting plaintiff to simple,
9 routine tasks, which would provide for a low stimulation environment, and that plaintiff
10 can have less than occasional contact with supervisors which means she would not be
11 negatively affected even if she did not like their supervisory style. AR. 33.

13 However, the ALJ did not discuss Dr. Patamia’s opinion that plaintiff would be
14 unable to work full-time, 40-hours per week in an office setting, AR. 725, and provided
15 no reason to reject this portion of the opinion. An ALJ “may not reject ‘significant
16 probative evidence’ without explanation.” *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th
17 Cir. 1995) (quoting *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984) (quoting
18 *Cotter v. Harris*, 642 F.2d 700, 706-07 (3d Cir. 1981))). The “ALJ’s written decision
19 must state reasons for disregarding [such] evidence.” *Flores*, 49 F.3d at 571. Here, the
20 indication from Dr. Patamia that plaintiff was unable to work full-time was significant
21 probative evidence that the ALJ erred in failing to discuss. *See* AR. 32-33, 725; SSR 96-
22 8p (requires the ALJ to assess the RFC in an ongoing 40-hour workweek setting).
23

1 Defendant does not directly respond to plaintiff's argument, and instead, argues
2 that Dr. Patamia's indication that plaintiff was unable to do full-time work is internally
3 inconsistent. Dkt. 9 at 7. However, the ALJ did not state that she was rejecting Dr.
4 Patamia's June 10, 2015 opinion on this basis. AR. 32-33. The Court may draw
5 reasonable inferences from the ALJ's opinion, but cannot consider defendant's *post hoc*
6 rationalizations about what the ALJ considered. *See Magallanes v. Bowen*, 881 F.2d 747,
7 775 (9th Cir. 1989). According to the Ninth Circuit, “[l]ong-standing principles of
8 administrative law require us to review the ALJ's decision based on the reasoning and
9 actual findings offered by the ALJ - - not *post hoc* rationalizations that attempt to intuit
10 what the adjudicator may have been thinking.” *Bray v. Comm'r of SSA*, 554 F.3d 1219,
11 1225-26 (9th Cir. 2009) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) (other
12 citation omitted)); *see also Molina v. Astrue*, 674 F.3d 1104, 1121 (9th Cir. 2012) (“we
13 may not uphold an agency’s decision on a ground not actually relied on by the agency”)
14 (citing *Chenery Corp.*, 332 U.S. at 196).
15

16 Because the Commissioner “may not reject ‘significant probative evidence’
17 without explanation,” and the ALJ failed to provide a specific and legitimate reason for
18 the failure to credit the entirety of Dr. Patamia’s June 10, 2015 opinion, the Court
19 concludes that the ALJ erred. *See Flores*, 49 F.3d at 570-71; *Provencio v. Astrue*, 2012
20 WL 2344072, *9 (D. Ariz., June 20, 2012) (finding the ALJ erred by giving “great
21 weight” to a consultative examiner’s opinion, yet ignoring parts of the opinion). The
22 Court also concludes that the error is not harmless.
23

1 The Ninth Circuit has “recognized that harmless error principles apply in the
2 Social Security Act context.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
3 (citing *Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th
4 Cir. 2006) (collecting cases)). The Ninth Circuit has reaffirmed the explanation in *Stout*
5 that “ALJ errors in social security are harmless if they are ‘inconsequential to the ultimate
6 nondisability determination’ and that ‘a reviewing court cannot consider [an] error
7 harmless unless it can confidently conclude that no reasonable ALJ, when fully crediting
8 the testimony, could have reached a different disability determination.’” *Marsh v. Colvin*,
9 792 F.3d 1170, 1173 (9th Cir. 2015) (citing *Stout*, 454 F.3d at 1055-56).

11 Here, the ALJ failed to fully credit the June 10, 2015 opinion from Dr. Patamia
12 that plaintiff would be unable to work full-time because of her impairments. AR. 725.
13 Fully crediting this opinion likely would lead to a different RFC determination, if not to a
14 finding of disability. Therefore, the Court cannot conclude with confidence “‘that no
15 reasonable ALJ, when fully crediting [Dr. Patamia’s June 10, 2015 opinion], could have
16 reached a different disability determination.’” *Marsh*, 792 F.3d at 1173 (citing *Stout*, 454
17 F.3d at 1055-56).

18 Plaintiff also challenges the weight assigned to Dr. Patamia’s other opinions
19 between 2015 and 2016 and Dr. McCollom’s April 28, 2015 opinion. Dkt. 8. Because the
20 ALJ’s decision may change, in terms of the entire decision and the ALJ’s assessment of
21 Dr. Patamia’s remaining opinions, if she considers and gives weight to the entirety of Dr.
22 Patamia’s June 10, 2015 opinion that she failed to discuss, the ALJ must reconsider all of
23 the medical evidence on remand. Plaintiff will also be able to present new evidence and

new testimony on remand. *See Program Operations Manual System (POMS), GN 03106.036 Court Remand Orders*, <https://secure.ssa.gov/poms.nsf/lnx/0203106036> (last visited September 12, 2018) (“[A] court order vacating the [ALJ’s] prior decision and remanding the case to the Commissioner voids the prior decision ... and thus returns the case to the status of a claim “pending” before SSA....The ALJ processes the case in the same way as a regular hearing and issues a decision.”); *see also Bartlett v. Berryhill*, 2017 WL 2464117, at *4 (W.D. Wash. June 7, 2017).

(2) Remand instructions

Plaintiff requests that this case be remanded for further proceedings, and does not seek an award of benefits. Dkt. 8. On remand, the ALJ is instructed to (1) reconsider all of the medical and non-medical evidence and (2) re-evaluate plaintiff's RFC and findings at steps four and five, if necessary.

CONCLUSION

Based on these reasons and the relevant record, the Court **ORDERS** that this matter be **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) to the Acting Commissioner for further consideration consistent with this order.

JUDGMENT should be for plaintiff and the case should be closed.

Dated this 25th day of September, 2018.

J. K. Ward Creative

J. Richard Creatura
United States Magistrate Judge